

REMARKS

The amendments set out above and the following remarks are believed responsive to the points raised by the Office Action dated December 29, 2004, and discussed during the interview with Examiner Marx on December 22, 2004. In view of the amendments set out above and the following remarks, reconsideration is respectfully requested.

As an initial point, Applicants' attorney greatly appreciates the courtesy shown her by Examiner Marx, and further appreciates her providing a proposed claim which would be allowable.

The Pending Claims

Claims 41, 42, 75 and 77 have been cancelled by this amendment, and claims 34, 37-40, 43-51, 74, 76, 78, 79, 81 and 82 remain pending. Claim 34 is the sole independent claim. All of the claims have been amended to describe the invention more clearly. No new matter has been added, the basis for the amended claim language may be found within the original specification, claims and drawings.

The Office Action

Claims 34, 36-51, 74, and 78-82 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At the interview, amendments to claim 34 were discussed. Claim 34 has been amended generally in accordance with the claim proposed by the Examiner, in order to more clearly describe the present invention. For example, claim 34 has been amended to refer to a method of producing docosahexaenoic acid (DHA) with a strain of *Cryptocodinium cohnii* comprising culturing the strain of *Cryptocodinium cohnii* in a nutrient medium, to controlling the process parameters in a manner that results in the absence of a stationary phase, and to recovering oil including DHA from the strain of *Cryptocodinium cohnii*.

Each of the dependent claims has also been amended to more clearly describe the invention. For example, claim 37 has been amended to provide antecedence. Amended claim 37 refers to "using the compound as the primary carbon source", in accordance with the language of claim 34. Amended claim 37 is directed to the method wherein the use of the compound as the primary carbon source by the strain of *Cryptocodinium cohnii* causes an increase in the pH of the nutrient medium and in response to the increase in pH, the method includes adding more compound to the nutrient medium. Claim 38 further defines the method

of claim 37 by referring to adding more compound to maintain the pH of the nutrient medium in a specific range, i.e., "at a value of between about 5 and about 8".

Claim 40 has been amended to provide antecedence. Amended claim 40 refers to "wherein the control device controls adding more compound", in accordance with the language of claim 37. Claims 41 and 42 have been cancelled so the rejection of these claims is now moot.

According to the Office Action, in claims 49 and 50 it is unclear what is intended by "initial" since according to claim 47 there is a pre-culturing step with glucose. Applicant's respectfully point out that claims 49 and 50 do not depend from claim 47, but rather depend from claim 48 which depends from claim 34. Thus, the pre-culturing step is not included in claim 49 or 50. The "initial concentration" therefore clearly refers to the initial concentration in the nutrient medium when culturing the *Cryptocodinium cohnii* in accordance with the method set forth in claim 34. Accordingly, it is believed that these claims are definite.

Claim 81 has been amended to provide antecedence, thereby overcoming the rejection of that claim as to form.

Thus, it is respectfully submitted that with these remarks and amendments to the claims, the bases for rejection under 35 U.S.C. §112 have now been overcome and should be withdrawn.

For the reasons set forth above, reconsideration of the rejection is respectfully requested.

Conclusion

In view of the amendment and remarks recited herein, the application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue.

In re Appln. of Rattledge et al.
Application No. 10/030,700

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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